

UNITED STATES SMALL BUSINESS ADMINISTRATION

Spokane, WA

July 27, 2005

PROCEEDINGS

[START TAPE 1 SIDE A]

MS. NANCY GILBERTSON: We have Alexis Koester on the line, the 9:45 call-in, and Bruce although he was first, he has agreed to let her go first.

MALE VOICE: Absolutely.

MS. GILBERTSON: Smith Brothers Farms. Alexis?

MS. ALEXIS KOESTER: Yes?

MALE VOICE: Please talk to us.

MS. KOESTER: Okay. My name is Alexis Koester and I am the granddaughter of Smith Brothers Farms' founder, Benjamin Smith. Our family-owned dairy is located in Kent, Washington. We at Smith Brothers Farms are very concerned about proposed amendments to federal milk marketing regulations that would harm consumers by selectively penalizing our dairy. Following is a brief overview of the proposed changes and what they would do to our business.

Large agribusiness interests, including the nation's biggest raw milk marketers and dairy processors, have been pushing for the past several years to change regulations through the US Department of Agriculture, USDA. The proposed regulatory change would negatively affect producer-handler dairy operation staff like Smith Brothers Farms, process and market milk from their own dairy cows on their own farms. Although aimed at the producer-handlers in the Pacific Northwest and Arizona-Las Vegas areas, the proposed rule change would set a national precedent and have national implications. Its results, if approved, would be to further consolidate the industry, raise prices and limit choice for consumers, and jeopardize the ability of thousands of customers to receive home delivery of the pure fresh milk they rely on.

The proposed regulatory change is not about health, safety or quality. It is about money and limiting competition. It would require those producer-handlers who put than 3 million pounds of milk on the market per month to pay substantial amounts of money into a pool of funds intended to subsidize other producers. 3 million pounds or about 350,000 gallons per month sounds like a lot, but many processors market much more than that. In the Northwest market alone, a total of 600 million pounds of dairy products are produced a month, making 3 million pounds only 1/200th of that total.

The federal funding pool, along with the price regulation that supports it, was created in the 1930s as a way to protect small dairy farmers from exploitation by centralized processors who might buy their raw milk at unfair prices. But because Smith Brothers Farms

and other producer-handlers process only our own milk from our own cows, the USDA does not have the authority to regulate us for business transactions in which we are not involved. We already carry the risk from production, processing and marketing. For this reason, we have always been exempt from this “pooling and pricing” regulation. Congress has upheld this exemption repeatedly since the 1960s. Never has Congress indicated intent to regulate producer-handlers or even that the statute provides authority to the USDA to do so.

The uniqueness of Smith Brothers Farms and other producer-handlers has not changed. The only reason for imposing a regulation now is to prevent any of us from providing competition to the large special interests in the modern dairy industry. Dean Foods [phonetic] and DFA, Dairy Farmers of America, with other large interests in backing the regulatory change that would radically redefine the way the four affected producer-handlers in the Pacific Northwest in Arizona do business. All three of the affected dairies in Washington and Oregon, Smith Brothers Farms in Kent, Washington, Mallories in Silverton, Oregon, and Edeline Dairy [phonetic] in Lindon, Washington, are small family-owned enterprises serving niche markets.

The bottom line is that the USDA is threatening our family farms by changing the rule after 75 years. This order will force us to give up any profit we now enjoy, and force us to pay other farmers and/or force us to sell off all or part of our farm. If farms that bottle their own milk are forced to pay into the federal pool, the most likely result will be that the increased expenses will be passed on to consumers, or these producer-handlers will reduce the size of their operations, or go out of business. Either way, the higher cost from reduced competition will be felt by consumers of milk at the store checkout. Families who now choose to buy their milk from producer-handlers will also lose their preferred choice of milk supplier.

We’re expected to compete as a processor, which we are. Every other processor in the nation is considered a small business by USDA if they have less than 500 employees, so under that standard, we qualify as a small business. However, the USDA has chosen to measure us on farm size. So based upon those we compete with, we are literally smaller, while we are considered a large business, and they are considered a small business. A dairy farm is considered a small business if they have an annual gross revenue of less than \$750,000. USDA stated in 1999 order reform that all producer-handlers were small businesses. At that time, we had more than \$750,000 in farm production, and we had less than 500 employees.

The rules haven’t changed, and Smith Brothers’ position relative to the rules haven’t changed. The only thing that has changed is that the USDA is playing hide the ball so they can force through a rule unsupported by the evidence and change 70 years of policy. These regulations have been in place for 70 years and we have built our

small businesses around them. This change must take that into effect. USDA has expedited this draft marketing order by coming out with a final version, final versus a draft order, that has left us and others feeling that the fix is already in. Smith Brothers Farms must process all the milk that comes from our farm and sells mostly fluid milk. If we have a surplus of milk and don't want it to go to waste, we must sell it for whatever we can get for it, even if it's well below our cost. We have also made substantial investments in land, housing and facilities, all on the basis that we can continue to operate as producer-handlers.

Even though we face unique risks, we feel that our business is valuable because of the unique services and products we provide our customers. We provide jobs for 110 employees and 60 independent distributors. There are literally hundreds of families who directly or indirectly owe their jobs to producer-handlers. We have the satisfaction of knowing that we are working in a family business with over 80 years of dairy tradition, and that we offer only the purest freshest milk to our customers. Producer-handlers are good citizens who contribute to the quality of life in the areas where they are located. In addition to the positive impact on the community tax base, producer-handlers contribute time, money and products to worthy local charities, Community Advance and those in need. Producer-handlers are proud of their communities and the money spent locally stays local. Tens of thousands of dollars each year are contributed to make local communities a better place to live.

Please help us with your colleagues at USDA. Without your direct intervention, we fear we will lose our family farming business. Thank you.

MALE VOICE: Alexis, thank you very much. Do we have your comment form and the testimony you've just read in writing?

MS. KOESTER: No, I will get it to you. I need to know where to send that.

MALE VOICE: Get it to Patty, who is your contact point for registering to testify.

MS. KOESTER: Okay.

MALE VOICE: And she will get it to our office.

MS. KOESTER: Okay.

MALE VOICE: And thank you for taking the time and being patient on the phone. Thank you very much.

MS. KOESTER: Well, thank you for listening.

MALE VOICE: Absolutely.

MR. MIKE DAHMER: Alexis, this is Mike Dahmer from Idaho. I live in an area that has 100,000 people and about 475,000

cows, so I'm knee-deep in this issue. [Laughter]

MS. KOESTER: Yes, you are.

MR. DAHMER: Where were you located? I missed that.

MS. KOESTER: We are in Kent, Washington, which is 20 miles south of Seattle. And about three years ago, we moved our cows over to eastern Washington about 150 miles from here because of the environmental situations in the Seattle area. So we truck our milk 150 miles across the mountains every day.

MR. DAHMER: Well, I do understand your issue. I'll be glad to also take that to the Idaho Dairy Users and see if they want to contribute also with your efforts.

MS. KOESTER: Thank you.

MALE VOICE: Thank you very much.

MS. KOESTER: Okay, is that all then?

MALE VOICE: Yes, thank you.

MS. KOESTER: You're welcome. Thank you for listening.

MALE VOICE: All right. Because our emphasis is outreach and making our services available any way we can to small business, you've just seen an example of our use of Ready Talk, where she dialed in on an 800 number and was given a code by Patty so that she could get into the meeting without having to travel here. And she could present her testimony and then she can go back to work. So we're trying to use technology in any way and every way we can to make sure that everybody has the opportunity to participate. All right, Bruce, are you right?

MR. BRUCE BARANY: Yeah. My name's Bruce Barany. I'm from a small business just down the street. It's the General Store. We've been in business 59 years and during those 59 years; we have been firearms dealers and handlers, federally licensed. Basically we've been selling them up since about 1947 up till now, and hopefully in the future. The problem we're having is with the Bureau of Alcohol, Tobacco and Firearms, and kind of a series of inspectors that we've gone through in the last five years.

Just to give you a brief history of what has gone on, from basically 1980 through 2000, periodically the BATF comes in. A person like Susan Nelson [phonetic] here will come in and go through the records that we have. They will pull out random records, check about a dozen of them, compare them to our inventory book and make sure that what's shown as sold to Peter Sorum is indeed in the book and all properly there and registered. Now, we probably had maybe a dozen inspections over the course of those 20 years, 1980 to 2000. In 2000, we had a battery of inspectors show up, armed fully with laptops. I

believe, Susan, you were there at that time. And basically camped out for about two weeks in the sporting goods office, going through in minute detail all of these records that are produced. This is no small amount of records to go through. They couldn't go through all 43,000 different transactions that were generated in that period of time, but they did find a number of clerical errors and some mismanagement on our part as to which agencies we had to alert when somebody bought a firearm. We have been taking corrective actions. That particular team found paperwork and, you know, just in that course of time, some pieces of paper either disappeared, were given to customers by accident, or somehow or other, we got separated from them. We have been working on getting back into compliance with these people.

We were faced with 20 years of what basically is somewhat lax enforcement by the Bureau of Alcohol, Tobacco and Firearms. They had, like I said, been in 12 times in probably 20 years, and then suddenly we were put underneath the microscope and all these years of lax compliance are sort of brought to a head all in one time. From 2000 through 2003, we were working with the initial team that did the investigation, which were four people headed by a fellow by the name of Jerry Christiansen [phonetic]. We were working towards a full compliance situation, to where our papers were entirely in order and chronological and all the ways that the BATF expects them to be.

And then in 2003, we had a different team of inspectors show up, camp out for another two weeks. They brought in another group of inspectors. Jerry Christiansen, which had headed up the initial investigation, I'm not sure what happened to him. None of the investigators cared to talk about him or even at the time when we went through a hearing with the BATF, Jerry Christiansen was not brought forward. He was a fellow that we were able to work with, that we were making progress with that we were getting our papers in order and our house in order with. In 2003, they brought in a Charlie Spalding [phonetic] out of the Portland office, along with his group. Jerry Christiansen's interpretation of the BATF "bible", as Charlie Spalding refers to it as, was somewhat different than the following inspector. Jerry Christiansen took one interpretation on several different points. Charlie Spalding took some radically different and far more highly-structured path on some of the inspections and some of the procedures and some of the requirements of the dealers. So here we were, faced with, you know, conflicting interpretations with the FFL dealer, namely ourselves, caught right in the middle of the crossfire.

And what this led to is what basically is sort of the end of our business if it goes through. It's a notice of a revocation of license. Now, we are the general store. We have a lot of different departments there. Our firearms department probably is about 25% to 30% of our business. And what's contingent also upon firearms are all the things

that go along with it, be it ammunition, be it sporting clothing, shoes, boots and all the things that are related with that. If this notice goes through and we lose our license, in essence we lose the business because I don't think we can stand with one leg of our stool removed. So we're currently waiting for an answer on this revocation of license from the Director of Industry in Seattle. What is listed upon these charges is a great deal of clerical problems and housekeeping problems that had built up over the course of 20 years. During the 20 years, none of the dozen inspectors or so that came through seemed to notice any of the problems that are found in this revocation. However, when the new team came through, and especially when the 2003 team came through, suddenly these things became very glaring. Things that the 2003 inspection team brought up were not even mentioned by the 2000 inspection teams. So what was important to one inspector was not important to the previous inspector. However, they ended up as a series of complaints in the notice of revocation.

So what we're faced with is just a real difficult time and following the terrific amount of paperwork and requirements that are required in the paperwork. However, I will say the last three inventories that we have done have been 100%. We are working our way towards total compliance, but it's hard to play catch up right away when you have 20 years, 25 years worth of paperwork that you got to deal with.

I'm just curious. Is there a rating for the BATF as far as their grade book goes? [Laughter] I hear there's one for the IRS. I'm curious if there's one for the BATF.

MALE VOICE: Yes, there is.

MR. BARANY: Okay. I'd be interested in that. What the future holds for us is kind of uncertain. It all hinges upon how this revocation comes out. But what the real future of the industry holds is kind of scary. In the mid nineties under Clinton's administration, they toughened the rules up on FFL holders, so it made it more of a storefront-type operation, rather than basement dealers. So the pool of federal firearms licensed dealer holders fell by almost 50%. Now, they had 50 inspectors approximately during the 1980s, 1990s. They have boosted that up to 350 when the BATF was transferred over to the Department of Justice. So now there are 350 man-years that are going to allotted around to do inspections on half as many FFL holders. Their current request to Congress is to double that number of inspectors.

What I see in the future instead of having a three to six to 10-day inspection period, will probably take three weeks. If this appropriation goes through Congress, there is going to be an incredible number of additional inspectors that are going to finely nitpick all the details that are contained in the green book to make lives as miserable for FFL holders as possible. I guess what I'm asking is sort of for the

ombudsman to look at this in a sense of fairness and reasonableness as far as enforcement goes, and how difficult it is when you have a revolving series of inspectors come through for inspection purposes. Thank you.

MALE VOICE: Do we have your submission in writing?

MR. BARANY: Yes.

MALE VOICE: Okay. There are two parts to what you've just said. One is the action taken and the other is whether or not they're in compliance with the Paperwork Reduction Act Congress passed. I need to look at those numbers too and see what they've reported there, but I'll do both.

MR. BARANY: Okay, thank you.

MALE VOICE: Okay? Thank you very much. Since we're talking about the Congress, Shelly Short is going to share with us.

MS. SHELLY SHORT: I'm going to read a statement on behalf of US representative, Cathy McMorris. First, I want to thank the SBA Office of the National Ombudsman for convening this Regulatory Fairness Hearing for small business to discuss concerns about federal regulatory compliance and enforcement in the region. I represent the Fifth Congressional District in the state of Washington, a district whose economic base is built on small business. We need to make it easier not harder for our small businesses to expand and our communities to prosper. We need to hold government accountable and ensure that our small businesses and communities aren't being hurt by excessive regulation. The Regulatory Flexibility Act of 1980 and the Small Business Fairness Enforcement Act of 1996 recognize the need for the federal agencies to fit regulatory and informational requirements to the scale of those subject to regulation. These acts also defined how agencies were to work with these small entities in developing actions and regulations that were the least impacted.

Unfortunately several agencies still continue to ignore seeking meaningful involvement of those entities thus defined in the acts. I have noticed that more and more federal agency actions are completed through planning and other non-decisional documents. While I encourage agency planning as a method to provide guidance to itself in its site-specific decisions, I do not condone agencies that use non-decisional documents to change the overall management direction without the involvement of small entities. This sidesteps the intent and purpose of the RFA and SBREFA. I would argue that any planning or non-decisional document that alters overall management direction be subject to those acts.

The Stephens County commissioners have such an experience. The US Fish and Wildlife Service was developing a step-down Habitat Management Plan on the Little Pend Oreille National Wildlife

Refuge. That was to dovetail in with this comprehensive plan. The Stephens County commissioners were denied at the table with the US Special Wildlife Service in writing by the agency because their step-down plan was non-decisional and wouldn't change management direction. Frankly she disagrees and was shocked by the lack of respect given to people who were very involved in the process.

Oftentimes small business and small governments are affected by federal mandates implemented by state agencies, especially in the areas of water quality and permits to discharge treated water. The state of Washington, for instance, has been given primacy to regulate the Federal Clean Water Act, subject to EPA's oversight. In my opinion, the state should have to comply with RFA and SBREFA because its sole authority comes from the federal act. I believe that the potential exists to once again sidestep the intent of these important small business laws. Many times agencies knowingly or unknowingly dilute the harm felt by small entities because the message they use to analyze the impact of a regulation are oftentimes more broad than they should be. Federal agencies should go to great lengths to understand the communities and business climate of the areas in which they have jurisdiction. How can an agency meaningfully measure the impact its regulations might have on small business if the measurement is done within a regional or even national context? Doesn't that defeat the purpose and intent of the RFA and SBREFRA?

In closing, I am encouraged by the efforts of some agencies that are involving local community leaders and businesses in the development of the scope and direction of its programs. The Colville National Forest, for example, has developed an impressive process for involving diverse stakeholders in its recreation and timber programs. They have taken the initiative to reach out to groups and involve them early on. While this has been a tedious process from time to time, I know their efforts will bear fruit in the end. Unfortunately other agencies have a long way to go in honestly looking at how their regulations affect small entities. Thank you so much for allowing me the opportunity to offer testimony.

MALE VOICE: Thank you, Shelly, and please thank the congresswoman.

MS. SHORT: I will.

MALE VOICE: Thank you very much. Roxanne Spalding?

MS. ROXANNE SPALDING: My name is Roxanne Spalding, no relation to the Charlie Spalding. [Laughter] And I married into the industry about 16 years ago and I've always had a passion for environmental [unintelligible] and recycling. And my husband, Steve Spalding, is a third year auto recycling yard owner. So we have a lot of background in this. We're here representing our company, Bill's Auto Parts, and also the Auto Recyclers of Washington. And when I

saw I would come here, I didn't know what to expect, but this is impressive, so I just want to thank all of you guys to be here for a group like us to speak.

I want to give you some background on the Automotive Recyclers of Washington. We're a group of auto dismantlers that remove the fluid, gases and other hazardous materials from end-of-life vehicles. We remove and sell these usable parts for these vehicles and then prepare and deliver the remains of the vehicle for recycling into new steel. This industry is one of the oldest and most environmentally effective industries in the state. I called them the original recyclers when I got involved. I have two very important issues to bring to your attention, but first I need to give you some background.

As I stated, the vehicle recycling industry is one of the oldest and most effective recycling industries in our nation, but government regulations are forcing this industry out of business. In 1998 in Washington State, there were 454 licensed vehicle recycling firms. In January of 2005, there were 247 licensed firms. About 45% of the industry has gone out of business in seven years. Today there are less than 240 and the number continues to decline. This is the case across the nation. The vehicle recycling industry is being put out of business. Government regulators must immediately address this issue.

Currently in the US, the recycling of end-of-life vehicles is paid for entirely by the vehicle recycling industry, and their funding comes from selling the reusable vehicle parts. This is about to change and it has changed in Japan, where now the buyers of new vehicles are charged an upfront fee of several hundred dollars to dispose of the vehicle. That would be [phonetic] like adding a new tax, a new tax to pay the cost of disposing the end-of-life vehicles that are now paid through the industry. The self-support of this industry failed in Japan, for many of the same reasons it would fail here. Here is the problem. The cost of government regulations on our industry have become so onerous that when these parts are added to our other costs to remove and sell parts, the price we must charge for the parts is getting very close to the cost of a new part. Customers often choose a new part over a used part, feeling it would be more reliable and will last longer. The more this happens, the more our industry will approach total failure.

So two issues. First is the EPA storm water regulations as they apply to vehicle recyclers as a result of 40 CFR 122.26 and the Multi-sector General Permit adopted by the USEPA. Together they require our industry to comply with extremely strict storm water discharge planning and monitoring requirements. This program is costing the average affected firm in our state about \$1,800 per year to comply with. Our industry operates on a very small margin, about 2% profit. For us to pay this cost to increase profits, we must generate \$90,000 in additional sales per firm, and receive no profit, but instead spend the profit on covering these new costs. Please remember sales

in our industry are declining, not increasing. The solution is for a firm that demonstrates that they have no contaminated discharge; the monitoring, reporting and other regulatory costs should be eliminated or greatly reduced. So today I ask your office to ask the EPA to reduce these regulatory costs as soon as possible if they want our industry to survive.

My second example deals with 40 CFR 63 and mercury emissions from steel recycling firms. Here is a regulation that was directed at one industry and ends up affecting our industry. Many US-built vehicles contain mercury-containing switches. The USEPA has determined that mercury is bad for the environment, which I think we agree, and has adopted a regulation under the CFR to attempt to greatly reduce or eliminate the mercury emission from steel recycling firms. But in reality, this regulation is aimed at us. The steel recycling firms request us to remove their mercury switches at our cost so that the mercury is not part of the scrap metal they receive.

The Automobile Recyclers Association or ARO has calculated the cost to remove a single mercury-containing convenience light switch is between \$3.58 and \$10.34. There are estimated to be convenience light switches in 40% of the end-of-life vehicles now being handled by our industry. The estimated cost is \$358,000 to over \$1 million per year in new cost spread across 240 firms in Washington State, or \$1,491 to \$4,291 per firm. Our industry in Washington State alone will have to generate between \$17.9 million and \$51.5 million in sales, and use these profits from the increased sales to cover the cost. That's an impossible increase in sales for our industry, especially when our sales are going down.

Here's what we ask you to do. The EPA must find a way to offset the cost being imposed on our industry by this regulation. There was no Regulatory Flexibility analysis done for this regulation that included our industry, yet our industry is taking the brunt of the impact. Auto manufacturers reportedly save 2 cents a switch when they switched from mechanical switches to mercury switches. Most US manufacturers decided to use mercury switches. Most foreign manufacturers did not because of the mercury disposal issue. The US manufacturers made this decision and they have the responsibility to cover the cost of their decision, not simply transfer their responsibility to our industry, and put us out of business. This is a critical problem that must be addressed now if government officials want to keep our industry operating, and thank you for [unintelligible].

MALE VOICE: Thank you very much, Roxanne. We have that -

MS. SPALDING: [Interposing] Yeah.

MALE VOICE: - statement in writing?

MS. SPALDING: I have [unintelligible].

MALE VOICE: Good. And you have 240 members in the state?

MS. SPALDING: There's 240 licenses.

MALE VOICE: Licenses, okay.

MS. SPALDING: They're not member, licenses.

MALE VOICE: Thank you very much. Fred Brackebusch?

MR. FRED BRACKEBUSCH: My name is Fred Brackebusch. I'm the president of the New Jersey Mining Company, which is a small business, a public company, you know, listed on the Over the Counter Bulletin Board. New Jersey Mining Company has mining claims under the 1872 Mining Law on public lands of the Panhandle National Forest, and the company has developed ore reserves as defined by the Securities and Exchange Commission, the Silver Strand mine, which is east of Coeur d'Alene, Idaho, and has submitted an operating plan to mine those reserves. The plan was submitted in April of 2003 and the US Forest Service, Department of Agriculture, completed an environmental assessment and issued an affirmative decision with certain stipulations, with quite a few stipulations, which are allowed under the various laws. That decision was issued in May of 2005, finally, a little over two years later. The decision was then appealed by an environmental group and recently the Forest Service denied that appeal, so the company can proceed after waiting a period of 27 months.

The complaint that is here, and it's a common one when dealing with public lands, is that the process of permitting takes much too long for a simple operation such as the Silver Strand mine, which is only going to mine about, it's an underground mine, to mine about 1,000 tons of ore per month. And the reason it takes so long is because the Forest Service does not complete the analysis and make a decision in a reasonable period of time. The whole permitting process has degenerated to become difficult and time-consuming and of course expensive. Even permits for drilling where there's no significant disturbance, for drilling exploration holes have taken us as long as 18 months to get. With respect to the Silver Strand mine, which is a gold and silver deposit, the company, New Jersey, must generate funding from the equity market and the uncertainty of getting decisions to operate from the Forest Service harms that ability to obtain funding. So that completes that one.

MALE VOICE: Now, you have another comment for another federal agency -

MR. BRACKEBUSCH: [Interposing] I do, yes.

MALE VOICE: - is that correct?

MR. BRACKEBUSCH: I did, yes, yes.

MALE VOICE: If you'd like to -

MR. BRACKEBUSCH: [Interposing] Okay.

MALE VOICE: - proceed with that, that'd be helpful.

MR. BRACKEBUSCH: All right. The second comment I have is regarding the, we call it MSHAW, Mine Safety and Health. It's an agency or administration? Administration I guess. Regulates safety in mines. The MSHAW requires mines to have contracted with mine rescue organizations under 30 CFR part 49.2, or to have its own mine rescue teams. Each mine or separate operation must have such a contract. In the case of New Jersey Mining Company, we have three small mines gathered in the Coeur d'Alene Mining District. They're all within about 25 or 30 air miles of each other. With only two miners working at each mine, the cost for the mine rescue contract is \$500 a month, and therefore the company faces a total monthly cost of \$1,500 a month for the three mines because they're considered separate mines. And remember, we've only got two miners at each location. It seems a reasonable situation that MSHAW could allow us to have one contract for all three mines, or considered as one mine to reduce the cost to only \$500 per month. That's that one.

MALE VOICE: Thank you very much, Fred. You have both submissions and both comments, correct?

MR. BRACKEBUSCH: Yeah, I did, yeah.

MALE VOICE: Very good. Thank you.

FRANK [phonetic]: Fred, is Panhandle in Idaho [unintelligible]?

MR. BRACKEBUSCH: Yes, Frank [phonetic] the whole north part. It's composed of the Connexsu [phonetic] and Port d'Alene, St. Joe Forest in the Panhandle.

MALE VOICE: See, I'm from Jerome and that's what we focus on. They're called Canada and you folks from our side [laughter] call us Mexico, so the American Free Trade Agreement applies here. I'll be glad to talk to you about that.

MALE VOICE: Is Bob Hopper [phonetic] present? In that case, Lori?

MS. LORI BLAU: I haven't [unintelligible] that world since that day [unintelligible]. [Laughter] Good morning, or afternoon for those of you that have made the trip out from what we refer to as the other Washington coming to the real Washington. And I'd like to thank you for the opportunity to address you today. I'm here representing Ponderay Newsprint Company, which is located in Usk, Washington. Downtown metropolitan Usk, as Norm might have heard me say

before.

While you may not think of a pulp and paper company as a small business, I often refer to Ponderay Newsprint as the small business of the paper industry. We're not warehouser [phonetic]. Ponderay Newsprint is a privately owned company and our facility in Usk is the one and only facility of the company. We have 194 regular fulltime employees. We have nine regular part-time employees and then we have a host of temporary summer students and other part-time employees that we employ up in Pend Oreille County, which typically has some of the highest unemployment in the state.

Ponderay Newsprint was built as a Greenfield mill, meaning it was a Greenfield before the mill was built, and we started up production in 1989. The mill was located in Pend Oreille County because of the abundant source of wood fiber and low-cost power that was available. Wood and power are our primary raw materials to make newsprint, and they account for approximately 40% of our product cost. The process of mechanically refining wood chips is power intensive, but has much slower environmental impacts than other pulping processes. To give you an example of how power intensive it is, we use in the pulp mill 70 megawatts of power per day, and in the whole mill we use 90 megawatts per day.

The Pond Oreille PUD's Box Canyon Dam supplies 40% to 50% of our power. Box Canyon currently generates up to 72 megawatts per day, depending upon the flow in the Pend Oreille River. It is a run of the river dam and does not have a reservoir. They are going to be installing some new turbines, which will increase their capacity to up to 90 megawatts. The average cost to operate Box Canyon Dam under their previous FERC license, which is Federal Energy Regulatory Commission, was approximately \$5 million per year. The PUD was issued a new license by FERC after a long re-licensing process on June 30th. And while the final conditions are still being evaluated, the operating costs under this new license are estimated to be an additional \$5 million per year, effectively doubling the price of the power out of this dam.

As PUD's only large customer, Ponderay Newsprint pays almost all the cost to operate Box Canyon Dam. Ponderay Newsprint is a highly competitive commodity market and we simply cannot absorb this kind of huge cost increase in one of our primary raw materials. If the Ponderay Newsprint facility were to close down, these costs for the new license would have to be spread over the PUD's remaining approximately 7,000 ratepayers in a county that is already plagued with high unemployment and low per capita income. As a non-federal hydro project, the Box Canyon re-licensing has been done through the Federal Energy Regulatory Commission.

Under the current rules, certain agencies have mandatory

conditioning authority, what the industry refer to as 4(e) conditioning authority, and for all FERC licenses. This means that agencies, such as the Forest Service, US Fish and Wildlife and the Department of the Interior, can mandate conditions on these licenses and FERC must accept them. In the case of Box Canyon Dam, the original conditions recommended by FERC staff and by the RE commissioning agencies would have added up to \$10 million per year to the operating costs of this dam. It has appeared through this process that many of the federal agencies are using the FERC licensing process as a funding source for projects that are not funded by Congress. Excuse me, I've been fighting this frog in my throat for months. Due to the re-licensing process, many of these extraneous projects were taken out, largely due to challenges based on science or from public outcry by the residents of Pend Oreille County.

The most difficult agency through this process has been the Department of the Interior, and some of their mandatory conditions are some of the most expensive and have the least amount of scientific basis. In fact, at the June 30th FERC meeting, two of the FERC commissioners voiced strong objections to the Department of the Interior's mandatory conditions for fish passage, stating they did not believe that there was sufficient scientific evidence to support these expensive conditions. However, as they were 4(e) conditions, they had no choice but to include them in the license.

Under the present rules, FERC is unable to balance these 4(e) mandatory conditions with the impact on people and the local economy. Congress is attempting to improve the situation with the Energy Bill, which has passed the house and Senate and is in conference. However, less [phonetic] provisions are added to allow FERC to go back and reconsider recently issued licenses. This will not help Box Canyon Dam. We feel it is important for you to know the impacts that occur when people and economics are not given proper consideration in regulatory actions. The PUD is now left with the options of accepting the license as is, which will almost certainly put Ponderay Newsprint out of business, or challenging it in court. Unless FERC or a federal court states certain provisions of the license by August 10, the PUD must begin implementing and accumulating the funds for these conditions.

While I don't have a specific request or idea of how the Small Business Administration can help Box Canyon Dam and Ponderay Newsprint, we do feel that it is important for you to know about this example of what happens when rules are written and agencies are managed without being required to seriously consider the impact on the local economy and the people in the local area. More often than not, these types of decisions and situations fall on the small business or in this case, the small county hydro project, who cannot afford to pay for the wish list of these federal agencies. Thank you very much.

MALE VOICE: Thank you very much, Lori, and if you have a copy of that -

MS. BLAU: [Interposing] Yes.

MALE VOICE: - I can take back. Sounds like something that advocacy needs to take a look at since it's not really done yet.

MS. BLAU: Yeah, it's not -

MALE VOICE: [Interposing] And it's -

MS. BLAU: - done yet and the August 10th date is very important in terms of stating certain provisions.

MALE VOICE: I'm glad you gave me some time. [Laughter].

MR. PETER SORUM: And Lori, you've been in touch with Connie Marshall, the regional advocate?

MS. BLAU: No.

MR. SORUM: Okay.

MS. BLAU: And I don't know if the PUD [unintelligible], it's a little bit, we're outside one loop because the PUD actually owns the dam and gets the license, but as a major customer and the ones who end up paying all of the cost, we follow this process, of course, very closely. And so I'll have to check on that.

MR. SORUM: I'll give you her telephone number.

MS. BLAU: Okay, that would be great.

MR. SORUM: She can help.

MS. BLAU: Thank you.

MALE VOICE: Was your license [unintelligible] renewal or was it just simply the PUD obtaining renewal, if you know? There weren't any other utilities attempting to?

MS. BLAU: Oh no, there is another dam and the example of Box Canyon, Box Canyon is the first of many FERC licenses that are coming up for renewal in the next little bit. The next one, actually there is another one on the river about 10 miles down river, which is Boundary Dam, which is owned by Seattle City Light. And they of course have been watching the Box Canyon process -

MALE VOICE: [Interposing] Did the -

MS. BLAU: - very closely.

MALE VOICE: Did the Despierce [phonetic] water agreements affect you at all?

MS. BLAU: I don't believe so. Shelly, do you know? I don't think so. I don't think so.

MALE VOICE: Thank you, Lori.

MS. BLAU: Thank you.

MALE VOICE: One of the other things that we do in these hearings is if you can't attend and you want to submit testimony, you can submit it in writing and we have one of our board members read it. We've got testimony from Gary Smith that Shiao-Yen's going to read.

MS. SHIAO-YEN WU: The IBA is a statewide organization of small business from virtually every industry and currently has over 4,200 participating small business owners. There is a very significant conflict from the federal OSHA regulations. Most small employers are required to comply with OSHA regulations, as well as Washington's Industrial Safety and Health Act, dedicated to enforce OSHA. However, they face a serious conflict. 29 CFR 1910.151 requires every small employer to provide first aid service to an injured worker promptly, yet 29 CFR 1910.1030 requires employers to also have a program to protect their employees from blood borne pathogen exposure.

The blood borne pathogen protection program has been designed promptly for the healthcare industry in response to HIV. The blood borne pathogen protection program is extremely complex and costly to implement, especially for a small business. According to OSHA's Regulatory Flexibility analysis of the final rule, the cost per private sector firm to comply with the blood borne pathogen regulations in 1991 ranges from \$872 to \$9,902, excluding hospitals that have projected an annual facility cost of \$51,946. The more directly involved in the delivery of medical service the firm is, the less costly compliance is because the fund has already met many of the requirements. For non-medical firms, the costs were more significant.

For example, personal service firm had a projected annual cost of \$9,902 per firm. The result is in order for small firms to meet the first aid requirements they must implement this extremely complex and costly blood borne pathogen program. In Washington State, the regulations state employers who require their employees to provide first aid must comply with chapter 296-823 WAC, occupational exposures to blood borne pathogens. State regulator goes on to say to small employers just don't require your employees to provide first aid. Small employers can't comply with the first aid requirement without requiring their employees to provide first aid, but if they require their employees to provide first aid, they must also comply with an extremely complex and costly blood borne pathogen program.

The basis of all this is from the federal regulations and we urge the ombudsman to ask that this be changed. Part of the first aid training should include techniques to protect against blood borne pathogen exposure by trained employees rendering first aid. And the first aid kit must include items from first aid training for employees

to use to protect them from blood borne pathogens. That should be adequate. A small business employee should not be told "We don't have to comply with the blood borne pathogen regulations. We don't require our employees to render first aid." But "We do require them to render first aid."

Thank you for considering my comment and we look forward to your response. Thank you.

MR. NORM PROCTOR: Thank you very much for reading that. We thank Mr. Smith for taking the time to put his testimony together on behalf of his membership, the Independent Business Association, and we'll take that comment and see what OSHA has to say about it.

Are there any other small business people who would like to testify that haven't registered? If not, I believe that when I do these hearings, we ought to get into it, get it done, and get you back to work, rather than waste your time with breaks and social hours. You can always socialize afterward if you want to. So with that, our hostess, Nancy?

MS. GILBERTSON: That's my cue to keep it short. [Laughter] So I'm just going to say some quick thank you: first of all, to our small business owners for taking the time from your very busy schedules. We really appreciate that. We realize how important the time is, and we appreciate that you participated today. Thank you too for the federal agency representatives. I hope that you share my attitude that we like to hear this. You know, sometimes we don't realize some of the problems, so this is something that we need to hear and we appreciate that you were so courteous and you didn't start a fight or anything. [Laughter] Thank you too to the representatives of our elected offices. We appreciate that you've taken the time to come out. We know that these are your concerns too. We appreciate that you're here. Thank you to Shiao-Yen and Mike for coming out. I've learned a little bit listening to both of you, so that's always good for me. Thanks again to the Small Business Development Center for helping us by providing the space and the refreshments, which there are still some left, so help yourselves on the way out, as well as the materials that are in the back of the room that tell a little bit more about some of the agencies. And thank you of course to my boss, Norm Proctor, for working to help us make this happen, and to Peter Sorum. And do either of you want to make a comment at all?

MALE VOICE: Can I just say one thing? Peter mentioned about the Office of Advocacy to Lori. For those of you that are having an issue with a federal agency before it becomes a regulation, I want to give you the telephone number. You have an advocate, her name is Connie Marshall. She's also a White House appointed person. She works about 10 feet from my office. She's just a gifted individual. Her

telephone number or her assistant's telephone number is 206-553-5676. She's one of the few people in the federal agency that actually has two jobs. She's a regional advocate for the four states, but she also serves as the mayor of Bellevue, Washington. So she knows the issue and she works very hard. She's very instrumental in passing Reg Flex, as Peter mentioned, on a national level, and rolling down to the state level, she just worked on passing one in Alaska that our administrators are going to attend a hearing next month for a bill-signing ceremony. And there's one going through Oregon. And they're looking at one in Idaho fairly soon. So 206-553-5676, Connie Marshall.

MS. GILBERTSON: Anything else?

MALE VOICE: No.

MALE VOICE: Thank you very much.

MS. GILBERTSON: And finally thank you to my staff, Patty, Sharon [phonetic], Rick [phonetic], you did a wonderful job. You will get great reward. [Laughter] That was a great day, thank you.

MALE VOICE: Thanks, all.

MALE VOICE: If I could get as many business cards as I could, I'd appreciate it.

[END TAPE 1 SIDE B]